

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No. 12-280, CSR 8716-E
Comcast Cable Communications, LLC)	MB Docket No. 12-286, CSR 8718-E
)	MB Docket No. 12-287, CSR 8719-E
Petitions for Determination of Effective)	MB Docket No. 12-303, CSR 8728-E
Competition in 7 Communities in New Mexico)	MB Docket No. 12-304, CSR 8729-E

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 2013

Released: June 17, 2013

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission several petitions pursuant to Sections 76.7, 76.905(b)(2), and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Attachment A Communities.” Petitioner alleges that its cable system serving the Attachment A Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Attachment A Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”). Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment B and hereinafter referred to as “Attachment B Communities,” pursuant to Section 623(l)(1)(A) of the Communications Act³ and Section 76.905(b)(1) of the Commission’s rules,⁴ because the Petitioner serves fewer than 30 percent of the households in those franchise areas. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁷ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ See 47 U.S.C. § 543(l)(1)(A).

⁴ 47 C.F.R. § 76.905(b)(1).

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906-907(b).

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁸ This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁹ It is undisputed that the Attachment A Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.¹⁰ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹¹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in those Attachment A Communities are reasonably aware that they may purchase the service of these MVPD providers.¹² The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming,¹³ and is supported in these petitions with copies of channel lineups for both DIRECTV and DISH.¹⁴ Also undisputed is Petitioner’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Attachment A Communities because of their national satellite footprint.¹⁵ Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner sought to determine the competing provider penetration in the Attachment A Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Attachment A Communities on a zip code plus four basis.¹⁶ Petitioner asserts that it is the

⁸ 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

⁹ 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

¹⁰ See Petitions at 3-5.

¹¹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹² 47 C.F.R. § 76.905(e)(2).

¹³ See 47 C.F.R. § 76.905(g); see also Petitions at 5.

¹⁴ See Petitions at Exhibit 1.

¹⁵ See Petitions at 3-5.

¹⁶ Petitions at 6-7.

largest MVPD in the Santa Fe franchise area.¹⁷ With respect to the communities of Cimarron, Grants, and Lovington, Petitioner asserts that it serves in excess of 15 percent of the households in those franchise areas, while competing MVPD providers serve an aggregate of more than 15 percent of those communities.¹⁸

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 household data,¹⁹ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in Santa Fe. With regard to the communities of Cimarron, Grants, and Lovington, we are able to conclude that the second prong of the competing provider test is met by analyzing the data submitted for both Petitioner and its MVPD competitors. If the subscriber penetration for both the Petitioner and the aggregate competing MVPD information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.²⁰ In Cimarron, the Petitioner's penetration rate is in excess of 15 percent of the households and the combined competing MVPD provider penetration rate is 42.45 percent.²¹ In Grants, the Petitioner's penetration rate is in excess of 15 percent of the households and the combined competing MVPD provider penetration rate is 45.87 percent.²² In Lovington, the Petitioner's penetration rate is in excess of 15 percent of the households and the combined competing MVPD provider penetration rate is 59.55 percent.²³ Therefore, the second prong of the competing provider test is satisfied for each of the Attachment A Communities. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Attachment A Communities.

B. The Low Penetration Test

7. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area. This test is referred to as the "low penetration" test.²⁴ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Attachment B Communities.²⁵

8. Based upon the subscriber penetration levels calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated that the percentage of households subscribing to its cable service is less than 30 percent of the households in the Attachment B Communities. Therefore, the low penetration test is satisfied as to the Attachment B Communities.

¹⁷ See CSR-8718-E Petition at 7 and attached Declaration of Warren Fitting, Senior Director of Regulatory Accounting for Comcast Cable Communications, LLC (September 6, 2012).

¹⁸ CSR-8716-E, CSR-8728-E, and CSR-8729-E Petitions at 7-8.

¹⁹ CSR-8718-E Petition at 6-8, Exhibits 4-6.

²⁰ See, e.g., *Charter Communications*, 21 FCC Rcd 1208, 1210, ¶ 5 (MB 2006); *Time Warner Entertainment Advance/Newhouse Partnership*, 17 FCC Rcd 23587, 23589, ¶ 6 (MB 2002).

²¹ See CSR-8716-E Petition at 7-8, Exhibit 6.

²² See CSR-8729-E Petition at 7-8, Exhibit 6.

²³ See CSR-8728-E Petition at 7-8, Exhibit 6.

²⁴ 47 U.S.C. § 543(l)(1)(A).

²⁵ CSR-8719-E, CSR-8728-E, and CSR-8729-E Petitions at 8-9.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachments A and B **IS REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

²⁶ 47 C.F.R. § 0.283.

ATTACHMENT A

MB Docket No. 12-280, CSR 8716-E
MB Docket No. 12-286, CSR 8718-E
MB Docket No. 12-303, CSR 8728-E
MB Docket No. 12-304, CSR 8729-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
Cimarron	NM0107	42.45%	457	194
Grants	NM0037	45.87%	3,327	1,526
Lovington	NM0013	59.55%	3,572	2,127
Santa Fe	NM0017 NM0143	30.85%	31,895	9,840

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

MB Docket No. 12-287, CSR 8719-E

MB Docket No. 12-303, CSR 8728-E

MB Docket No. 12-304, CSR 8729-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Cibola County	NM0080 NM0082 NM0083	4,807	3	0.06%
Lea County	NM0067	4,862	107	2.20%
Santa Fe County	NM0053 NM0126 NM0142 NM0144 NM0172 NM0187 NM0188	27,363	2,425	8.86%